

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

PHILIP LORENZO GALLAGHER	)	No. ED102720
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of St. Charles County
vs.	)	
	)	Hon. Matthew E.P. Thornhill
DIRECTOR OF REVENUE,	)	
	)	Filed:
Appellant.	)	February 23, 2016

The Director of Revenue appeals from the judgment of the trial court reinstating the driving privileges of Philip Gallagher, which were suspended after his arrest for driving while intoxicated. The Director argues that the trial court erred in excluding from evidence the breath sample results showing Gallagher's blood alcohol content ("BAC") was over the legal limit. She argues that the court erroneously concluded that the Director had not established a foundation for its admission in accordance with 19 CSR 25-30.051 because the manufacturer of the gas mixture used to maintain the breath analyzer was not an approved supplier under that regulation.

REVERSED AND REMANDED.

#### Division One holds:

The plain meaning of "provided from approved suppliers" in 19 CSR 25-30.051(5) requires only proof that the entity that provided the gas mixture to law enforcement was an approved supplier listed in the regulation. There is no further requirement of proof regarding the manufacturer of the gas mixture or any other entity in the chain of supply.

The entity identified on the maintenance report as the supplier of the gas mixture in this case was an approved supplier under 19 CSR 25-30.051. The fact that the gas mixture was manufactured by another entity is irrelevant to the admissibility of the breath sample results.

Opinion by: Robert G. Dowd, Jr., P.J.  
Mary K. Hoff, J. and Roy L. Richter, J., concur.

Attorney for Appellant:

Rachel M. Jones

Attorneys for Respondent:

Carl M. Ward, Denise L. Childress

<p><b>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</b></p>
---